

Department of the Navy, DoD

§ 701.18

(1) This provision is intended for situations where public access in a timely manner is important and it is not intended to apply where there may be a limited number of requests over a short period of time from a few requesters. DON activities may remove the records from this access medium when the appropriate officials determine that access is no longer necessary.

(2) Should a requester submit a FOIA request for FOIA-processed (a)(2) records and insist that the request be processed under FOIA, DON activities shall process the FOIA request. However, DON activities have no obligation to process a FOIA request for (a)(2)(A), (B) and (C) records because these records are required to be made public and not FOIA-processed under paragraph (a)(3) of the FOIA.

(e) However, agency records that are withheld under FOIA from public disclosure, based on one or more of the FOIA exemptions, do not qualify as (a)(2) materials and need not be published in the FEDERAL REGISTER or made available in a library reading room.

§ 701.15 5 U.S.C. 552(a)(3) materials.

Agency records which are processed for release under the provisions of the FOIA.

§ 701.16 Administrative appeal.

A request made by a FOIA requester asking the appellate authority (JAG or OGC) to reverse a decision to: withhold all or part of a requested record; deny a fee category claim by a requester; deny a request for expedited processing due to demonstrated compelling need; deny a request for a waiver or reduction of fees; deny a request to review an initial fee estimate; and confirm that no records were located during the initial search. FOIA requesters may also appeal a non-response to a FOIA request within the statutory time limits.

§ 701.17 Affirmative information disclosure.

This is where a DON activity makes records available to the public on its own initiative. In such instance, the DON activity has determined in advance that a certain type of records or

information is likely to be of such interest to members of the public, and that it can be disclosed without concern for any FOIA exemption sensitivity. Affirmative disclosures can be of mutual benefit to both the DON and the members of the public who are interested in obtaining access to such information.

§ 701.18 Agency record.

Agency records are either created or obtained by an agency and under agency control at the time of the FOIA request. Agency records are stored as various kinds of media, such as:

(a) Products of data compilation (all books, maps, photographs, machine readable materials, inclusive of those in electronic form or format, or other documentary materials), regardless of physical form or characteristics, made or received by an agency of the United States Government under Federal law in connection with the transaction of public business and in Department of the Navy possession and control at the time the FOIA request is made.

(b) Care should be taken not to exclude records from being considered agency records, unless they fall within one of the following categories:

(1) Objects or articles, such as structures, furniture, paintings, three-dimensional models, vehicles, equipment, parts of aircraft, ships, etc., whatever their historical value or value as evidence.

(2) Anything that is not a tangible or documentary record, such as an individual's memory or oral communication.

(3) Personal records of an individual not subject to agency creation or retention requirements, created and maintained primarily for the convenience of an agency employee, and not distributed to other agency employees for their official use. Personal papers fall into three categories: those created before entering Government service; private materials brought into, created, or received in the office that were not created or received in the course of transacting Government business, and work-related personal papers that are not used in the transaction of Government business.